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MEDIATION OF CASES PENDING BEFORE JUDGE GERGEL

Instructions: Complete this form and file with the joint Rule 26(f) Report.

Case Name: Henna Cardenas v. Resort Sales by Spinnaker, Inc., et al.

C/A No.: 9:20-cv-376-RMG

1. Would early mediation be useful in this case? If the answer is in the affirmative, when would you propose to conduct mediation in this matter?

RESPONSE:

Plaintiff's position: Plaintiff needs to know the identit(ies) of the entit(ies) who called her on behalf of Defendants together with: (a) the way that/those entit(ies) claim they obtained prior express consent to call Plaintiff, and (b) the total number of people called who supposedly consented in the same way. Defendants control how quickly that information is provided. Instead, they have proposed a bifurcated discovery schedule—where the Parties would first focus solely on the Plaintiff's individual claim—that accomplishes little more than needlessly delaying the litigation *and* the disclosure of information needed to appropriately evaluate settlement consistent with Plaintiff and her counsel's duties to members of the as-yet uncertified class.

Defendants' position: Yes. At the conclusion of Plaintiff (only) merits discovery, if bifurcated discovery is ordered by this Court. In response and contrary to Plaintiff's position, above, Defendants further state that they do not "control how quickly [] information is provided" by non-party independent contractors. Defendants' proposed Phase I topics of discovery, items 1-6, set forth in Defendants' Discovery Plan provide for discovery of non-party independent contractors who may have made the alleged calls to Plaintiff. However, discovery in Phase I should be limited to the merits of Plaintiff's direct liability claims against Defendants since prior discovery and a judicial decision in the District of New Jersey confirmed that neither Defendant made the alleged calls to Plaintiff. If Plaintiff's direct liability claims are dismissed following Phase I, the scope of this case will be narrowed and the burden of unnecessary, time-consuming, and costly discovery will be avoided.

2. If early mediation is not thought to be useful, when is the earliest stage in which you believe it might be useful?

RESPONSE:

Plaintiff's position: See above for Plaintiff. Once the necessary information is disclosed Plaintiff will be in a position to provide a written settlement demand.

Defendant's position: Not applicable.

3. Please provide the court with any additional information that would assist in setting a timeline for required mediation.

RESPONSE: None.

Signatures

/s/ Margaret A. Collins, Esq.

/s/ S. Harrison Williams, Esq.

Party Represented

Plaintiff Henna Cardenas

Defendants Resort Sales by Spinnaker, Inc.
and Resort Sales Missouri, Inc.